

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD W. QUEER,)	
)	Civil Action No. 08 – 483
Petitioner,)	
)	
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
RANDALL E. BRITTON,)	
<i>Superintendent, THE ATTORNEY</i>)	
GENERAL OF THE STATE OF)	
PENNSYLVANIA, and THE)	
DISTRICT ATTORNEY OF THE)	
COUNTY OF WESTMORELAND,)	
)	
Respondents.)	

ORDER

This matter is before the Court upon review of the petition for writ of habeas corpus, filed by Petitioner on April 9, 2008 (ECF No. 1), and the supplement thereto, filed on March 2, 2011 (ECF No. 15). At this time, the Court finds that a conference with the parties is necessary to clarify a certain issue that has presented itself in the course of reviewing the petition. Specifically, Petitioner claims that in the hearing held on February 1, 2005, his post-sentence counsel, Attorney R.E. Valasek, testified that he did not file an appeal from Petitioner's judgment of sentence despite Petitioner's request that he do so, nor did he file a no merit letter. The Court has reviewed the transcript of this hearing and finds no such testimony or any testimony as to counsel's conduct during post-sentence and direct appeal proceedings. Instead, counsel testified only as to his representation of Petitioner during his first PCRA proceedings. Despite this fact, both Judge Blahovec and Attorney Emily Smarto reference similar testimony

by Attorney Valasek in a hearing held on August 3, 2005, wherein Judge Blahovec reinstated Petitioner's direct appeal rights *nunc pro tunc*. The Court can find nowhere in the record where such testimony was given by Attorney Valasek, apart from reference to such by Judge Blahovec and Attorney Smarto in this August 3, 2005 hearing. Therefore, the Court finds that it is necessary for the parties to clarify this issue. This conference will be strictly limited to providing the Court with insight as to when, or if, such testimony occurred. The conference is scheduled for **October 28, 2013, at 11:00 a.m. in Courtroom 7B**. Petitioner will participate via video conference at his place of confinement. Accordingly, it is so **ORDERED**.

Dated: October 16, 2013.

/s/ Lisa Pupo Lenihan

Lisa Pupo Lenihan
Chief United States Magistrate Judge

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